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LUCENT TECHNOLOGIES INC. AND ALCATEL-  
LUCENT, S.A.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

SANDISK CORPORATION,  
  
Plaintiff,  
  
vs.  
  
LUCENT TECHNOLOGIES INC. and  
ALCATEL-LUCENT, S.A.,  
  
Defendants.

AND RELATED COUNTERCLAIM

Case No.: C 07 03618 JF

**JOINT CASE MANAGEMENT  
STATEMENT PURSUANT TO  
FEDERAL RULE OF CIVIL  
PROCEDURE 26(f).**

Plaintiff and Counterdefendant SanDisk Corporation (“SanDisk”) and Defendant  
and Counterclaimants Lucent Technologies Inc. (“Lucent”) and Alcatel-Lucent, S.A.  
(collectively, “Alcatel-Lucent” or “Defendants”) hereby submit this Case Management

C 07 03618 JF

**JOINT CASE MANAGEMENT STATEMENT PURSUANT TO RULE 26(f)**

Statement pursuant to Federal Rule of Civil Procedure 26(f) and Civil Local Rule 16-9 in preparation for the November 30, 2007, Initial Case Management Conference.

**1. Jurisdiction and Service.** All parties have been properly served and no issues exist regarding personal jurisdiction. Alcatel-Lucent contends that this Court lacks subject-matter jurisdiction over this case and SanDisk disagrees.

**a. SanDisk's Statement.** This Court has jurisdiction over the subject matter of this action pursuant to U.S.C.A. Const. Art. 3 § 1 et seq. and 28 U.S.C.A. § 2201(a). This action was initiated in response to Lucent's assertion of two patents, U.S. Patent No. 5,341,457 ("the '457 patent") and U.S. Patent No. RE39,080 ("the '080 patent"), against virtually all of SanDisk's digital musical players currently on the market. SanDisk disputed the need for a license, thus creating a controversy sufficient to enable this Court to issue a declaratory judgment regarding the parties' legal rights as they pertain to the two patents. *See MedImmune, Inc. v. Genentech, Inc.*, 127 S. Ct. 764, 771 (2007); *SanDisk Corp. v. STMicroelectronics, Inc.*, 480 F.3d 1372, 1381 (Fed. Cir. 2007). *See also* SanDisk's Reply In Support of Motion for Summary Judgment at Section II(A). Lucent also agreed in writing that subject matter jurisdiction exists, and agreed not to challenge subject matter jurisdiction in this matter. *See* Second Declaration of Gregory Lippetz, Exhibit A, filed in connection with SanDisk's Reply In Support of Motion for Summary Judgment.

**b. Alcatel-Lucent's Statement.** Alcatel-Lucent disagrees with SanDisk's assertion that this Court has subject-matter jurisdiction over this litigation. First, the brief communications between SanDisk and Alcatel-Lucent in May and June 2007 were not sufficient to create a real and immediate controversy between the parties sufficient to support declaratory adjudication by this Court. *See MedImmune, Inc. v. Genentech, Inc.*, 127 S. Ct. 764, 771 (2007); *SanDisk Corp. v. STMicroelectronics, Inc.*, 480 F.3d 1372, 1381 (Fed. Cir. 2007). *See also* Defendant's Opposition To SanDisk's Motion for Summary Judgment at Section A.1. Second, events subsequent to the filing of SanDisk's complaint, including a judgment in another case involving the patents-in-suit, a pending appeal of that judgment, Defendants' offer not to assert the patents pending resolution of that appeal, and the issues identified in SanDisk's motion to dismiss,

demonstrate that SanDisk's declaratory-judgment claims now lack the reality and immediacy necessary to support subject-matter jurisdiction. See *Benitec Austl., Ltd. v. Nucleonics, Inc.*, 495 F.3d 1340, 1343 (Fed. Cir. 2007).

Alcatel-Lucent also contests whether the non-disclosure agreement cited by SanDisk has any impact on this Court's evaluation of whether it has subject-matter jurisdiction over SanDisk's claim. The Supreme Court has repeatedly held that parties can not, by agreement, create jurisdiction where no facts supporting jurisdiction exist. See *Sosna v. Iowa*, 419 U.S. 393, 398 (1975) (parties agreement regarding subject matter jurisdiction insufficient to "invoke the judicial power of the United States in litigation which does not present an actual 'case or controversy'"); *Ins. Corp. Of Ireland, Ltd. v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694, 702 (1982) ("no action of the parties can confer subject-matter jurisdiction upon a federal court"). Moreover, this Court must examine whether it has subject-matter jurisdiction over SanDisk's claims even if Alcatel-Lucent had not raised an objection to subject-matter jurisdiction. See, e.g., *Wachovia Bank, N. A., v. Schmidt*, 546 U.S. 303, 316 (2006) (subject-matter jurisdiction relates to the "court's competence to adjudicate a particular category of cases" and "must be considered by the court on its own motion, even if no party raises an objection"); Fed. Rule Civ. Proc. 12(h)(3).

**2. Facts of the Case.** This case relates to alleged patent infringement of patents owned by Lucent.

**a. SanDisk's Statement.** SanDisk manufactures, markets and sells digital music players as part of its ongoing business. SanDisk's digital music players can store music that has been encoded into a digital format, and can play or decode such music files. However, SanDisk's digital music players cannot encode digital music files. SanDisk's digital music players are compatible with various file formats, including compressed music file formats commonly referred to as "MP3" and "WMA." SanDisk's digital music players are also compatible with files that have been encoded by numerous manufacturers' encoding software, including Real Networks' Rhapsody!, Apple's iTunes and Microsoft's Windows Media Player.

1 Lucent asserted two patents against SanDisk's digital music players, the '457  
 2 patent and the '080 patent. The patents in suit were previously litigated in a suit involving,  
 3 Dolby Laboratories, Inc. and Dolby Laboratories Licensing. *Dolby Labs. v. Lucent Tech., Inc.*,  
 4 Case No. 5:01-cv-20709 (N.D. Cal.) (the "*Dolby case*"). On April 22, 2005, this Court granted  
 5 the Dolby parties summary judgment of non-infringement with respect to both the '457 and '938  
 6 patents. On October 10, 2006, the Court of Appeals for the Federal Circuit affirmed the District  
 7 Court's judgment. *Dolby Labs. v. Lucent Tech., Inc.*, 202 Fed. Appx. 459, 2006 WL 3026384  
 8 (Fed. Cir. Oct. 10, 2006).

9 The patents in suit were also litigated in a lawsuit against Microsoft and its  
 10 personal computer manufacturer customers. *Lucent Tech., Inc. v. Gateway, Inc.*, Case No. 3:02-  
 11 cv-02060 (S.D. Cal.) (the "*Microsoft case*"). A jury verdict in that case was issued on February  
 12 22, 2007, finding that certain versions of Microsoft's Windows Media Player product infringed  
 13 certain claims of the '457 patent and '080 patents.

14 On May 11, 2007, Lucent asserted the '457 and '080 patents against SanDisk.  
 15 Faced with the choice of continuing to sell products accused of infringement or discontinuing its  
 16 entire digital music player product line, SanDisk filed the Complaint in this action, seeking a  
 17 declaration that its players did not infringe the patents, a declaration that it was licensed to the  
 18 '080 patent and a declaration that the patents were invalid.

19 On August 6, 2007, the *Microsoft* court granted Microsoft's motion for judgment  
 20 as a matter of law, and issued a final judgment reversing the jury's verdict (the "*Microsoft*  
 21 *Judgment*"). In the *Microsoft Judgment*, the court specifically held that: 1) another party,  
 22 Fraunhofer, was a joint owner of the '080 patent, 2) because Lucent was only a joint owner, it  
 23 lacked standing to bring suit for infringement of the '080 patent, 3) as a joint owner, Fraunhofer  
 24 was entitled to license the '080 patent, 5) Microsoft was licensed to the '080 patent, and 5)  
 25 Microsoft's Windows Media Player did not infringe the '457 patent. Lucent is in the process of  
 26 appealing the *Microsoft Judgment* to the United States Court of Appeals for the Federal Circuit.

27 **b. Alcatel-Lucent's Statement.** On July 13, 2007, SanDisk filed its declaratory judgment  
 28 complaint following three brief communications from Alcatel-Lucent. The first, a May 11,

1 2007, Alcatel-Lucent letter to SanDisk, offered SanDisk “a non-exclusive patent license to  
2 Alcatel-Lucent’s patents for MP3 technology” and informed SanDisk that Alcatel-Lucent had  
3 available for license “a number of patents relating to MP3 technology, including U.S. Patent No.  
4 5,341,457 and U.S. Reissue Patent No. Re 39,080.” *See* Defendant’s Opposition To SanDisk’s  
5 Motion for Summary Judgment. Alcatel-Lucent told SanDisk that it “believe[d] that SanDisk  
6 should consider acquiring a license for its digital multimedia players with MP3 capabilities such  
7 as those listed in [an] attached table” but the letter made no allegation that any of these players,  
8 or any SanDisk activity, infringed either the ‘457 or ‘080 patent. *Id.*

9           The second was a follow-up e-mail sent several weeks later, in which Alcatel-  
10 Lucent requested information regarding the “person in charge of inbound licensing.” *Id.* The  
11 third was a response to SanDisk’s litigation counsel, in which Alcatel-Lucent “reiterate[ed]  
12 [Alcatel-Lucent’s] offer to initiate a business discussion.” Although in response to a request  
13 from SanDisk, Alcatel-Lucent pointed out that “these patents were involved in a litigation  
14 against Microsoft” and identified the “specific claims [that] were found valid and infringed” in  
15 that litigation, Alcatel-Lucent did not assert in that e-mail that SanDisk infringed either the ‘080  
16 or ‘457 patent or suggest that the Microsoft litigation result impacted SanDisk’s products or  
17 activities. *Id.* Even though SanDisk accepted Alcatel-Lucent’s offer to meet, SanDisk filed its  
18 complaint some two weeks before the scheduled meeting. *Id.*

19           Lucent litigated an action against Microsoft in the United States District Court for  
20 the Southern District of California for infringement of the ‘457 and ‘080 patents. In February  
21 2007, a jury returned a verdict that both patents were valid and infringed by Microsoft’s MP3  
22 audio-compression technology. *Id.* Just weeks after SanDisk filed its declaratory-judgment  
23 complaint here, the district court in the *Microsoft* action issued an amended final judgment in  
24 which the court held the ‘457 patent valid and enforceable, but not infringed. *Id.* The *Microsoft*  
25 court held the ‘080 patent valid, enforceable, and infringed, but entered judgment in favor of  
26 Microsoft on the grounds that a third party, Fraunhofer, co-owns the patent, depriving Lucent of  
27 standing and providing Microsoft a license under a pre-existing agreement with Fraunhofer. *Id.*  
28 Both parties to the *Microsoft* action subsequently filed notices of appeal. *Id.*

Defendants contacted SanDisk soon after the San Diego court issued its amended judgment to propose a voluntary dismissal of this action without prejudice pending resolution of the *Microsoft* appeal. Lucent additionally agreed not to bring suit against SanDisk or its customers on the '457 or '080 patents in the interim, and to afford SanDisk an opportunity — upon the Federal Circuit's decision — to file a new declaratory-judgment action before Lucent, if it chose, brought any action for infringement of the '457 or '080 patent. SanDisk, however, rejected this proposal, and instead demanded that Defendants stipulate to entry of judgment in SanDisk's favor based upon the district court's judgment in the *Microsoft* litigation. Defendants subsequently filed a motion to dismiss this action without prejudice or, in the alternative, stay this action pending resolution of the *Microsoft* appeal. *See* Defendants' Motion To Dismiss Without Prejudice Or Stay Pending Resolution Of Appeal In Related Case. Defendants also served and filed a responsive pleading in which Lucent interposed a compulsory counterclaim for infringement of the '080 patent to avoid a later allegation that it had waived such a claim should it prevail in the *Microsoft* appeal. *See* Answer And Counterclaim Of Lucent Technologies Inc. And Alcatel-Lucent, S.A.

**3. Legal Issues.** Many of the key legal issues are also set forth in detail in SanDisk's Motion for Summary Judgment, SanDisk's Motion to Dismiss and Defendants Motion to Dismiss or Stay.

**a. SanDisk's Statement.** SanDisk contends that it is not liable to Lucent for infringement of the patents. Both of the patents in suit relate to specific methods of encoding digital audio signals as part of a compression system. SanDisk's digital music players do not encode audio signals and, as a result, do not directly infringe either patent. Additionally, SanDisk's digital music players are compatible with numerous file formats, such as WMA, encoded by many manufacturers' encoding software, which are not alleged to involve use of the patents. As a result, SanDisk's digital music players have substantial non-infringing uses, relieving SanDisk of liability for contributory infringement. Furthermore, because SanDisk does not intend for its customers to use Lucent's patented compression system, SanDisk is not liable for inducing

1 infringement. Finally, SanDisk contends that it is licensed to the '080 patent because it has a  
2 license to the Fraunhofer MP3 patents, including the '080 patent.

3 **b. Alcatel-Lucent's Statement.** Alcatel-Lucent contends that the brief interactions  
4 between Alcatel-Lucent and SanDisk were not sufficient to create subject-matter jurisdiction  
5 over SanDisk's claims. *See* Defendant's Opposition To SanDisk's Motion for Summary  
6 Judgment. Moreover, Alcatel-Lucent contends that events subsequent to the filing of SanDisk's  
7 complaint confirm that no subject-matter jurisdiction exists. *Id.* SanDisk is, therefore, not  
8 entitled to any of the relief that it seeks.

9 Alcatel-Lucent disputes SanDisk's characterization of the '080 and '457 patents  
10 as solely "relat[ing] to specific methods of encoding digital audio signals as part of a  
11 compression system." *See* ¶ 3a. While both the '080 and '457 patents describe and claim  
12 methods of encoding audio signals, the '080 patent includes a claim to a decoder capable  
13 decoding signals encoded according to the patented method and the '457 patent includes a claim  
14 directed to a storage medium that stores audio that has been encoded according to the patented  
15 method. *See* Defendant's Opposition To SanDisk's Motion for Summary Judgment.

16 Should this Court find that subject-matter jurisdiction does exist, Lucent contends  
17 that SanDisk infringes, contributes to the infringement of, and induces infringement of at least  
18 one claim of the '080 patent by virtue of its making, importing, using, offering for sale, or selling  
19 its MP3 players. Moreover, Lucent contends that SanDisk has not demonstrated that it is entitled  
20 to a declaration of noninfringement on either patent-in-suit and that Lucent is entitled to  
21 discovery on that issue.

22 **4. Motions.** On November 30, 2007, the Court is scheduled to hear argument on SanDisk's  
23 Motion for Summary Judgment and SanDisk's Motion to Dismiss Lucent's Counterclaim.  
24 SanDisk's Motion for Summary Judgment alleges that SanDisk is entitled to a judgment of non-  
25 infringement because SanDisk does not indirectly or directly infringe either patent, and for a  
26 judgment that SanDisk is licensed to the '080 patent. SanDisk's Motion to Dismiss alleges that  
27 Lucent's Counterclaim for infringement of the '080 patent should be dismissed because: 1)  
28 SanDisk does not infringe the patent, as set forth in its Motion for Summary Judgment, 2)

SanDisk is licensed to the '080 patent, and 3) Lucent lacks a legally protected interest in the '080 patent because it lacks standing to assert the patent.

On December 21, 2007, the Court is scheduled to hear argument on Defendants' Motion to Dismiss or Stay SanDisk's Complaint. Lucent's Motion To Dismiss or Stay alleges that, as a result of Lucent's appeal of the *Microsoft* Judgment, and the potential impact of the appeal on the issues to be decided in this case, the Court should exercise its discretion to either dismiss SanDisk's Complaint or stay the entire action until the appeal is decided.

The parties do not anticipate filing any other motions at this time.

**5. Amended Pleadings.** To date, there have been no amendments to the pleadings in this matter. The parties agree that the Court should set a deadline to amend pleadings ninety (90) days after the Court rules on the three pending motions.

**6. Evidence Preservation.** The parties have taken affirmative steps to preserve discoverable evidence in this matter. The parties have circulated litigation hold notices to the employees likely to have discoverable evidence, and have suspended document destruction policies that were likely to destroy discoverable evidence.

**7. Disclosures.** The parties conducted a conference under Fed. R. Civ. Proc. 26(f) on Friday, November 9, 2007.

**a. Fed. R. Civ. Proc. 26(a)(1) Disclosures.** The Parties agree, and request that the Court order, that service of Rule 26(a)(1) disclosures should occur thirty (30) days after the Court rules on the last to be decided of the pending Motions.

**b. Patent Local Rule 3-1 to 3-6 Disclosures.** The parties disagree on the applicability and timing for the Patent Local Rule 3-1 to 3-6 disclosures.

**(1) SanDisk's Statement.** SanDisk's position is that Lucent is obligated to provide its Patent L.R. 3-1 and 3-2 disclosures on December 10, 2007, ten days after the Initial Case Management Conference, and that SanDisk's Patent L.R. 3-3 and 3-4 disclosures should be due on January 24, 2008, 45 days later. Patent L.R. 3-5(a) provides that, in all declaratory judgment cases, Patent L.R. 3-1 and 3-2 shall not apply "unless and until a claim for patent infringement is made by a party." Lucent made "a claim for patent infringement" when it filed its counterclaim

1 for infringement of one of the two patents-in-suit. Therefore, Patent L.R. 3-1 and 3-2 apply, and  
 2 Lucent must provide its disclosures as to the '080 patent by December 10, 2007. Lucent's  
 3 compliance with Patent L.R. 3-1 and 3-2 will then obligate SanDisk to comply with Patent L.R.  
 4 3-3 and 3-4 as to the '080 patent 45 days later.

5 Although Patent L.R. 3-5(a) applies only to the '080 patent, for purposes of  
 6 efficiency and case management Lucent should provide disclosures regarding the '457 patent at  
 7 the same time. Lucent will suffer no prejudice from doing so since it has already fully litigated  
 8 the '457 patent (as well as the '080 patent) in two separate cases, the *Dolby* case and the  
 9 *Microsoft* case. Therefore, Lucent should make its disclosures in connection with the '080 and  
 10 '457 patent pursuant to Patent L.R. 3-1 and 3-2 by December 10, 2007, and SanDisk should  
 11 make its Patent L.R. 3-3 and 3-4 disclosures for both patents 45 days thereafter, or by January  
 12 24, 2008.

13 **(2) Alcatel-Lucent's Statement.** Alcatel-Lucent's position is that the submission of  
 14 preliminary infringement and invalidity disclosures under the Patent Local Rules should be  
 15 stayed until thirty (30) days after the Court rules on the last to be decided of the pending  
 16 Motions. Alcatel-Lucent's position is consistent with the parties' positions regarding (1) Initial  
 17 Disclosures under Fed. R. Civ. P. 26(a) and (2) the initiation of discovery other than that needed  
 18 to respond to SanDisk's summary judgment motion. *See* ¶¶ 7a, 8. Because the pending Motions  
 19 may dispose of all issues raised in this matter or stay the case pending resolution of the *Microsoft*  
 20 appeal, Alcatel-Lucent believes that delaying the submission of infringement and invalidity  
 21 disclosures will not prejudice either party or delay the litigation.

22 Should the Court find that submission of preliminary infringement and invalidity  
 23 contentions is necessary, Alcatel-Lucent's position is that SanDisk should submit its preliminary  
 24 invalidity contentions regarding the '457 patent at the same time that Alcatel-Lucent submits its  
 25 preliminary infringement contentions regarding the '080 patent. SanDisk would then submit its  
 26 preliminary invalidity contentions regarding the '080 patent 45 days later. This procedure is  
 27 consistent with the Patent Local Rules and reflects the positions of the parties. As SanDisk  
 28 points out above, Patent Local Rule 3-5(a) provides that a declaratory judgment defendant is not

1 required to submit preliminary infringement contentions “unless and until a claim for patent  
2 infringement is made.” Lucent has made no claim for infringement of the ‘457 patent and is,  
3 therefore, not required to submit infringement contentions. SanDisk seeks a declaration of  
4 noninfringement on the ‘457 patent and, in the absence of any claim for infringement, has the  
5 burden to demonstrate that it is entitled to such a declaration. SanDisk’s argument that Lucent is  
6 not prejudiced because it has previously litigated the ‘457 patent ignores that SanDisk’s products  
7 were not accused and not at issue in those earlier litigations.

8 **8. Discovery.**

9 **a. SanDisk’s Statement.** SanDisk’s position is that no discovery should occur until after  
10 the Court rules on the three pending motions and that, if necessary, the parties should negotiate a  
11 discovery plan after the Court rules on the pending motions.

12 **b. Alcatel-Lucent’s Statement.** Alcatel-Lucent’s position is that discovery regarding the  
13 issues presented in SanDisk’s summary-judgment motion is required to provide a complete  
14 record upon which Alcatel-Lucent can base its opposition to SanDisk’s motion. *See* Defendants’  
15 Opposition To SanDisk’s Motion For Summary Judgment. Alcatel-Lucent agrees that no  
16 discovery, other than that identified in Defendants’ Opposition, should occur until after the Court  
17 rules on the three pending motions and that, if necessary, the parties should negotiate a discovery  
18 plan after the Court rules on the pending motions

19 **9. Class Actions.** This is not a class action.

20 **10. Related Cases.** There are two cases in which the patents-in-suit have previously been  
21 litigated, the Dolby and Microsoft cases, discussed in the Facts of the Case section.

22 **11. Relief.**

23 **a. SanDisk’s Statement.** SanDisk seeks a declaration that SanDisk has not infringed,  
24 induced others to infringe or contributed to infringement of the ‘457 or ‘080 patents; that the ‘457  
25 and ‘080 patents are invalid, in whole or in part; and that SanDisk is licensed to practice the ‘080  
26 patent. SanDisk also seeks an injunction prohibiting Lucent from charging infringement of, or  
27 instituting any action for alleged infringement of the ‘457 or ‘080 patents against SanDisk  
28

whether direct or indirect, reasonable attorneys' fees and costs of suit, and for such other and further relief as the Court deems just and equitable.

**b. Alcatel-Lucent's Statement.** Alcatel-Lucent denies that SanDisk is entitled to any of the relief that it seeks. Should this Court conclude it has subject-matter jurisdiction and determines in its discretion to exercise that jurisdiction, Lucent seeks (1) a judgment that SanDisk has infringed the '080 patent; (2) a permanent injunction enjoining SanDisk from infringement, inducement of infringement, and contributory infringement of the '080 patent, (3) damages adequate to compensate it for SanDisk's infringement of the '080 patent, including, if proper, treble damages and prejudgment interest; (4) its attorney fees, costs, and expenses incurred in prosecuting this action; (5) a order that SanDisk shall take no relief on any of its declaratory-judgment claims; and (6) such other and further relief as this Court deems just and proper.

**12. Settlement and ADR.** The parties agree that settlement discussions are premature and will not be productive at this time. The parties disagree as to the timing of future settlement discussions and ADR processes.

**a. SanDisk's Statement.** SanDisk's position is that the parties should postpone any discussion of ADR procedures under the Local ADR Rules until after the Court rules on its pending Motion for Summary Judgment and Motion to Dismiss.

**b. Alcatel-Lucent's Statement.** Alcatel-Lucent's position is that the parties should conduct a mediation after the Federal Circuit resolves the pending appeal of the *Microsoft* judgment and notes that SanDisk agreed with that position in the Stipulation and Order Selecting ADR Process, which has been signed by this Court.

**13. Consent to a Magistrate Judge.** The parties do not consent to the assignment of this matter to a magistrate judge.

**14. Other References.** The parties have determined that this case is not suitable for reference to binding arbitration or Special Master.

**15. Narrowing of Issues.** Other than the pending Motion for Summary Judgment and Motions to Dismiss and issues raised therein, the parties are currently not aware of any issues

that can be narrowed by agreement or by motion, nor have they agreed on means to expedite the presentation of evidence at trial.

**16. Expedited Schedule.** The parties have not determined whether this case can be handled on an expedited basis.

**17. Scheduling.** The parties agree that they should discuss the proposed schedule for the case after the Court rules on the three pending motions.

**18. Trial.** The parties agree that they should discuss the proposed date for and length of trial after the Court rules on the three pending motions.

**19. Disclosure of Non-Party Interested Entities or Persons.** As of this date, other than the named parties, there is no such interest to report.

DATED: November 11, 2007

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DATED: November 11, 2007

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